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TR.A. DOCKET ROOM
August 11, 2003

VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc. Pursuant to the
Telecommunications Act of 1996
Docket No. 03-00119

Dear Chairman Tate:

Enclosed are the original and fourteen copies of the following rebuttal testimony
on behalf of BellSouth:

Keith Milner
Kathy Blake

Ron Pate
John Ruscilli.

Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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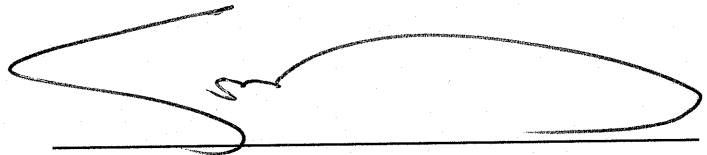
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A handwritten signature in black ink, appearing to read "D. Adelman", is written over a horizontal line.

BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF KATHY K. BLAKE
BEFORE THE TENNESSEE REGULATORY AUTHORITY
DOCKET NO. 03-00119
AUGUST 11, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes, I filed direct testimony in this proceeding on August 4, 2003.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to rebut, in part, the direct testimony of ITC^DeltaCom Communications, Inc. ("DeltaCom") witnesses Jerry Watts, Joe Gillan and Steve Brownworth.

1 *Issue 26: Local Switching – Line Cap and Other Restrictions (Attachment 2 –*
2 *Sections 10.1.3.2 and 10.1.2):*

3 *(a) Is the line cap on local switching in certain designated MSAs only for a*
4 *particular customer at a particular location?*

5 *(b) Should the Agreement include language that prevents BellSouth from*
6 *imposing restrictions on DeltaCom's use of local switching?*

7 *(c) Is BellSouth required to provide local switching at market rates where*
8 *BellSouth is not required to provide local switching as a UNE? If so, what*
9 *should be the market rate?*

10

11 Q. ON PAGE 14, MR. WATTS ACKNOWLEDGES THAT THE AUTHORITY
12 ADDRESSED THIS ISSUE IN ITS AT&T/BELLSOUTH ARBITRATION
13 ORDER DATED NOVEMBER 29, 2001, AND SUGGESTS THAT THE
14 AUTHORITY SHOULD RETAIN THE CURRENT/EXPIRED CONTRACT
15 LANGUAGE. HOW DO YOU RESPOND?

16

17 A. As an initial matter, the line cap language in the current/expired DeltaCom
18 contract is now contrary to the most recent decisions of this Authority. The
19 language that Mr. Watts seeks to retain in the new contract was approved prior
20 to the Authority's decision in the AT&T/BellSouth arbitration proceeding. Mr.
21 Watts' suggestion that the Authority allow DeltaCom to retain the existing
22 language, just because the Authority previously approved their old language,
23 has no merit. As such, it is appropriate for the Authority to require language
24 that is consistent with both the Authority's recent findings in the AT&T
25 arbitration and with the FCC's UNE Remand Order. The Authority should

1 reject DeltaCom's request to retain language from the current/expired
2 interconnection agreement that is contrary to the Authority's recent findings on
3 this same issue.

4
5 Q. IN ADDRESSING ISSUE 26(b), DELTACOM PROPOSES LANGUAGE
6 THAT DELTACOM ASSERTS "IS NECESSARY TO ENSURE THAT
7 BELL SOUTH DOES NOT ATTEMPT TO IMPOSE ARBITRARY
8 RESTRICTIONS OR LIMITATION, EITHER EXPLICITLY OR
9 IMPLICITLY, THAT CREATE BARRIERS TO ITC^DELTACOM'S
10 ABILITY TO ACCESS UNEs UNDER STATE AND FEDERAL RULES
11 AND REGULATIONS." (WATTS, PAGE 15) WHY IS BELL SOUTH
12 OPPOSED TO INCLUDING DELTACOM'S PROPOSED LANGUAGE?

13
14 A. DeltaCom's proposed language is neither necessary nor appropriate. Language
15 set forth in Section 10.1.1 of Attachment 2, to which both DeltaCom and
16 BellSouth have agreed, obligates BellSouth to "provide non-discriminatory
17 access to local circuit switching capability, and local tandem switching
18 capability, on an unbundled basis, except as set forth below in Section 10.1.3
19 below to ITC^DeltaCom for the provision of a telecommunications service."
20 The exception reference in Section 10.1.3 specifically addresses the definition
21 of Local Circuit Switching Capability and sets forth the 4-line exception.

22
23 Additionally, the undisputed language in the Interconnection Agreement
24 allows DeltaCom to obtain unbundled switching except in those limited
25 situations in which the FCC has expressly stated that DeltaCom is not entitled

1 to obtain unbundled switching. For these reasons, no additional language is
2 necessary or appropriate.

3

4 Q. MR. WATTS (PAGE 16) AND MR. GILLAN (PAGE 10) CONTEND THAT
5 IT IS INAPPROPRIATE FOR BELL SOUTH TO CHARGE MARKET
6 RATES WITHOUT A DEMONSTRATION THAT A COMPETITIVE
7 MARKET EXISTS. HOW DO YOU RESPOND?

8

9 A. Mr. Watts and Mr. Gillan appear to be confused. In order for BellSouth to be
10 relieved of its obligation to offer unbundled network elements ("UNEs") at
11 rates based on total element long run incremental cost ("TELRIC"), either this
12 Authority or the FCC would have had to make a determination that
13 Competitive Local Exchange Carriers ("CLECs") are not impaired in their
14 ability to compete without access to such a UNE. One of the factors in
15 determining that CLECs are not impaired is the existence of alternative
16 providers for the capability, in this case, a switch. In taking issue with the use
17 of the term "market rates", DeltaCom's witnesses compare BellSouth's market
18 rate for a port with the Tennessee TELRIC unbundled port rate and
19 inappropriately assert that there has not been a demonstration that a
20 competitive market exists. If that were the case (which it is not), BellSouth
21 would still be obligated to ubiquitously offer unbundled local switching at
22 TELRIC rates and would not have the ability to put forth a market rate for
23 those exempted situations. Market rates are by definition set by the market;
24 they are not set by methodologies such as TELRIC, as DeltaCom seems to
25 suggest.

1
2 Furthermore, being relieved of its obligation to provide local switching at
3 artificially-low TELRIC prices does not mean that BellSouth no longer
4 provides local switching to CLECs like DeltaCom. Contrary to Mr. Gillian's
5 implication on pages 6-7, BellSouth is fulfilling its obligations to provide local
6 switching through the competitive checklist in Section 271. In recognition of
7 the fact that CLECs are not impaired in their ability to either provide their own
8 local switching or to obtain local switching from other sources, the prices
9 BellSouth may charge for local switching will no longer be limited by the
10 artificial, hypothetical, and forward-looking TELRIC methodology. Instead,
11 the market will set those prices. In other words, if BellSouth's price for local
12 switching is too high, one of the many other carriers with switching capacity
13 will offer lower prices to DeltaCom and other CLECs. That is the way
14 competition works. Mr. Watts' suggestion that the Authority should continue
15 to monitor BellSouth's prices after a determination has been made that CLECs
16 are not impaired in their ability to obtain local switching is simply wrong.

17

18 Q. DO YOU AGREE WITH MR. GILLAN (PAGE 11) THAT "THE FCC
19 LACKED A RECORD BASIS" WHEN IT DEFINED THE RELEVANT
20 MARKETS FOR THE "3-LINE RULE?"

21

22 A. No. In ¶294 of the UNE Remand Order, FCC 99-238, the FCC specifically
23 addressed the appropriateness of the number of lines being used to determine
24 the unbundled local switching exemption. The FCC stated:

25

1 We recognize that a rule that removes unbundling obligations based on
2 line count will be marginally overinclusive or underinclusive given
3 individual factual circumstances. We find, however, *that in our expert*
4 *judgment*, a rule that distinguishes customers with four lines or more
5 from those with three lines or less reasonably captures the division
6 between the mass market—where competition is nascent—and medium
7 and large business market—where competition is beginning to broaden.

8 [Emphasis added.]

9 Thus, the FCC made a conscious decision based on its *expert judgment* that the
10 unbundled local switching exemption should apply when a customer has four
11 or more lines, and this Authority is not free to disregard that judgment, as Mr.
12 Gillan seems to suggest.

13 Q. HOW DO YOU RESPOND TO MR. GILLAN'S SUGGESTION THAT THE
14 AUTHORITY SHOULD DISALLOW BELLSOUTH'S MARKET RATE IN
15 FAVOR OF A TELRIC RATE?

16 A. Mr. Gillan's suggestion is baseless, self-serving and, in essence, prevents
17 BellSouth from being able to avail itself of the FCC's unbundled local
18 switching exemption in the Nashville MSA. The position that Mr. Gillan and
19 DeltaCom are taking is anti-market competition and pro-regulation. Such a
20 position is in direct contrast to my understanding of the intent of the Act and
21 the orders from the FCC. Both the Act and the FCC orders, in my opinion,
22 have determined that in cases where elements, such as local switching, are no
23 longer UNEs subject to the pricing requirements of Section 252(d)(2), that the
24 rates for such elements should be set by the competitive marketplace and not
25 by unnecessary and counterproductive regulation.

1

2 Q. CAN THE AUTHORITY REQUIRE BELL SOUTH TO PROVIDE
3 UNBUNDLED LOCAL SWITCHING WITHOUT REGARD TO THE FCC'S
4 RULES?

5

6 A. No. While I, like Mr. Gillan, am not a lawyer, a cursory review of the Act and
7 recent federal court decisions makes clear the erroneousness of Mr. Gillan's
8 position. Numerous sections of the Act emphasize that the exercise of
9 authority by state public service commissions must be consistent with the Act
10 and FCC regulations implementing the Act. These include Section 251(d)(3),
11 Section 252(c), and Section 252(d). In addition to the limitations found in
12 Sections 251 and 252, Section 261(c) permits a state commission to impose
13 additional requirements on telecommunications carriers only when the state
14 requirements are necessary to further competition *as long as* those
15 requirements are not inconsistent with the Act or applicable FCC rules. A
16 state-imposed requirement that BellSouth provide expanded unbundled local
17 switching in contravention of explicit determinations by the FCC would not be
18 consistent with any of these statutory provisions.

19

20 Federal court decisions confirm that state commission unbundling decisions
21 must be consistent with, and not contrary to, the Act or FCC determinations.
22 In the words of the United States Supreme Court, it would be "surpassing
23 strange" to permit 50 state agencies independently to implement a "federal
24 regime" outside of the guidelines established by federal agency regulations.
25 *See AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721, 730 n.6 (1999). As

1 noted by the Supreme Court:

2 [T]he question in these cases is not whether the Federal
3 Government has taken the regulation of local
4 telecommunications competitors away from the states. With
5 regard to the matters addressed by the 1996 act, it
6 unquestionably has

7 ...
8 *This is, at bottom, a debate not about whether the States will*
9 *be allowed to do their own thing, but about whether it will be*
10 *the FCC or the courts that draw the lines to which they must*
11 *hew.*

12 *Iowa Utilities Board*, 119 S.Ct. at 730 n.6 (emphasis added).

13 Q. MR. GILLAN CONTENDS (PAGE 15) THAT BELLSOUTH'S
14 PROPOSED MARKET RATES ARE "PATENTLY
15 UNREASONABLE AND WITHOUT SUPPORT." HAS MR. GILLAN
16 OFFERED ANY SUPPORT FOR SUCH CONTENTIONS?

17 A. No. It appears to me that Mr. Gillan is attempting to argue that BellSouth's
18 proposed market rates for local switching are unjust and unreasonable simply
19 because they are different than the TELRIC rates. Mr. Gillan's statement in
20 regard to his Table 1 that "BellSouth's proposed rates demonstrate that
21 alternatives to BellSouth-provided switching do not exist" ignores the fact that
22 resale and self-supplied local switching are alternatives available to DeltaCom.
23 In fact, DeltaCom currently has its own switch located in the Nashville MSA.
24 I find it illuminating that DeltaCom has apparently chosen to purchase
25 BellSouth's market rate local switching instead of utilizing its self-supplied
 switch. Indeed, Mr. Gillan's testimony provides the clue as to why DeltaCom
 chooses to use BellSouth's local switching. It is apparently cheaper for

1 DeltaCom to buy local switching from BellSouth at its market rate than it is for
2 DeltaCom to use its own, readily-available switch.

3
4 It is important to recognize that CLECs like DeltaCom have placed switches in
5 Tennessee and then chosen not to use their own facilities in lieu of obtaining
6 artificially-low, TELRIC-priced switching from BellSouth. This obviously
7 provides a disincentive for other CLECs to invest in Tennessee by purchasing
8 a switch. CLECs may or may not choose to invest in switching to provide
9 local switching to end user customers or to other carriers on a wholesale basis.
10 Such a CLEC's decision is surely based, in large measure, on whether
11 unbundled switching can be obtained for the ILEC at artificially low (i.e.,
12 TELRIC) rates. Likewise, it is unlikely that a carrier would purchase
13 unbundled switching from a competing CLEC if the ILEC is forced to provide
14 switching at TELRIC rates.

15

16 Q. MR. GILLAN CHALLENGES "THE PLAUSIBILITY OF
17 BELL SOUTH'S RESPONSES" TO TWO INTERROGATORIES (PAGE 16)
18 BY STATING THAT "BELL SOUTH IS UNABLE (OR UNWILLING) TO
19 OFFER ANY SUPPORT IN THEIR DEFENSE." PLEASE COMMENT.

20

21 A. As an initial matter, BellSouth stands by and defends the accuracy of its
22 interrogatory responses as submitted. Although BellSouth was unable to locate
23 anyone with knowledge, workpapers or documents that support the
24 **development** of the \$14.00 market rate for switching, that does not mean that
25 BellSouth's market rate is inappropriate. In fact, a simple comparison of the

CLEC's estimated cost for a market-priced UNE-P and the CLEC's estimated cost of BellSouth's resale discounted Complete Choice offering reveals that the market priced UNE-P is a viable alternative. The table below reflects the margins available under the UNE-P options (TELRIC-priced and market-priced) and the resale option relevant to BellSouth's retail Complete Choice offering for Business.

BellSouth - Tennessee Rates			
	UNE-P TELRIC Rate Zone 1	UNE-P Market Rate Zone 1	16% Resale Discount Statewide
<u>Costs</u>			
UNE-P Loop	\$11.11	\$11.11	
UNE-P Port	\$1.70	\$14.00	
Usage (Note 1)	\$2.53	\$2.53	
Features	\$0.00	\$0.00	
ODUF (Note 2)	\$0.93	\$0.93	
Complete Choice - Business			\$51.24
Subscriber Line Charge			\$6.50
Recurring Cost	\$16.27	\$28.57	\$57.74
<u>Estimated Revenues</u>			
Complete Choice Service - Business	\$61.00	\$61.00	\$61.00
Subscriber Line Charge	\$6.50	\$6.50	\$6.50
Access (Note 2)	\$0.90	\$0.90	\$0.90
Total	\$68.40	\$68.40	\$68.40
Margins - Complete Choice Business % (Margin divided by Total Revenue)	\$52.13 76.2%	\$39.83 58.2%	\$10.66 15.6%
Percent of access lines in zone	67.9%	67.9%	

Note 1 - BellSouth calculated the average usage cost for TN using state specific usage characteristics.

Note 2 - Estimates of ODUF messages used in calculation of DUF costs and Access revenues per line per month based on AT&T affiant Lieberman's Affidavit Exhibits D-6 and D-7 filed March 4, 2002 in BellSouth's FCC GA/LA 271 proceeding.

Table - 1

1
2 Further, as Table 2 demonstrates below, comparing the rates BellSouth
3 proposed in Docket No. 97-01262 for the UNE-P components (loop, port and
4 features) with the market-priced UNE-P rates for these same components
5 clearly reveals that BellSouth's \$14.00 market rate for local switching is just
6 and reasonable.
7

<u>Tennessee Rates</u>	UNE-P	UNE-P
	Market Rate	TELRIC
	Zone 1	Rates*
		Zone 1
Loop	\$11.11	\$16.66
Port	\$14.00	\$2.50
Features	\$0.00	\$2.44
Total	\$25.11	\$21.60

14 * BellSouth Proposed rates in TRA Docket 97-01262

15 **Table – 2**

16 It appears to me that DeltaCom is simply attempting to maximize its profit at
17 BellSouth's expense. The Authority should see through DeltaCom's thinly
18 veiled attempt to restrict BellSouth's ability to charge market rates for local
19 switching consistent with the FCC's orders.
20

21 ***Issue 36: UNE/Special Access Combinations (Attachment 2 – Sections 10.7 and***
22 ***10.9.1):***

23 ***(a) Should DeltaCom be able to connect UNE loops to special access***
24 ***transport?***
25

1 ***(b) Does BellSouth combine special access services with UNEs for other***
2 ***ALECs?***

3
4 Q. ALTHOUGH MR. BROWNORTH ACKNOWLEDGES THAT
5 DELTACOM BELIEVES THE FCC WILL ADDRESS THIS ISSUE IN ITS
6 TRIENNIAL REVIEW ORDER, HE PROPOSES ON PAGE 14 OF HIS
7 PREFILED TESTIMONY THAT THE AUTHORITY SHOULD REQUIRE
8 BELLSOUTH TO PROVIDE UNE/SPECIAL ACCESS SERVICES
9 COMBINATIONS FOR THE FULL TERM OF THE INTERCONNECTION
10 AGREEMENT. HOW DO YOU RESPOND?

11
12 A. As I discussed in my direct testimony, the existing FCC rules do not obligate
13 BellSouth to provide combinations of UNEs and tariffed services. While it is
14 likely that the FCC will address its current prohibition against "co-mingling"
15 in its Triennial Review, the final outcome of the FCC's impending ruling is
16 unclear. Until the FCC's written order becomes effective, any action contrary
17 to the current rules, which is based solely on DeltaCom's speculation of what
18 the FCC might decide, is premature and inappropriate.

19
20 ***Issue 37: Conversion of a Special Access Loop to a UNE Loop that Terminates to***
21 ***DeltaCom's Collocation (Attachment 2): Where DeltaCom has a special***
22 ***access loop that goes to DeltaCom's collocation space, can that special***
23 ***access loop be converted to a UNE loop?***

1 Q. PLEASE ADDRESS MR. BROWNORTH'S STATEMENT ON PAGE 16
2 THAT "BELLSOUTH HAS AGREED TO LANGUAGE WITH AT&T
3 WHEREBY BELLSOUTH HAS AGREED TO CONVERT A SPECIAL
4 ACCESS LOOP TO A UNE LOOP THAT GOES TO A COLLOCATION
5 SITE WITHOUT ANY DISCONNECTION TO THE CUSTOMER."

6
7 A. Mr. Brownworth's statement is totally incorrect. BellSouth has not agreed to
8 any such language with AT&T; however, any CLEC, including DeltaCom, has
9 the ability to make such a request through the New Business Request ("NBR")
10 process.

11

12 *Issue 57: Rates and Charges for Conversion of Customers from Special Access to*
13 *UNE-based Service (Attachment 2 – Section 2.3.1.6):*

14 a) *Should BellSouth be permitted to charge DeltaCom for converting customers*
15 *from a special access loop to a UNE loop?*

16 b) *Should the Agreement address the manner in which the conversion will take*
17 *place? If so, must the conversion be completed such that there is no*
18 *disconnect and reconnect (i.e., no outage to the customer)?*

19

20 Q. ON PAGE 17, MR. BROWNORTH SUGGESTS THAT DELTACOM
21 SHOULD BE ALLOWED TO UTILIZE A SPREADSHEET PROCESS TO
22 FACILITATE THE "CONVERSION" OF MULTIPLE SPECIAL ACCESS
23 CUSTOMERS TO STAND-ALONE UNES. PLEASE RESPOND.

24

25

1 A. Contrary to Mr. Brownworth's contentions, the BellSouth and AT&T current
2 Interconnection Agreement does not permit "AT&T to send a spreadsheet with
3 a list of special access circuits to be converted to a UNE loop." (Brownworth at
4 page 15, line 25) To the extent DeltaCom desires BellSouth to consider a new
5 business request for a service or capability that BellSouth is not obligated to
6 provide, DeltaCom may avail itself of the NBR process. In fact, since 2001,
7 ten (10) CLECs have submitted NBRs and BellSouth has reached contractual
8 arrangements, outside the purview of BellSouth's obligations under the Act
9 and FCC orders, with four (4) of these CLECs to project manage a process to
10 replace special access circuits to stand-alone UNEs. BellSouth is continuing
11 to negotiate agreements pursuant to the NBR process with five (5) of these
12 CLECs.

13
14 Q. ON PAGE 16, MR. BROWNORTH STATES THAT "ITC^DELTACOM
15 DOES NOT WANT TO PAY FOR THE FULL INSTALLATION CHARGES
16 OF THE FCC CIRCUIT AND THEN TURN AROUND AND INCUR THE
17 FULL INSTALLATION CHARGES OF A UNE CIRCUIT." PLEASE
18 DESCRIBE THE CHARGES THAT ARE APPLICABLE WHEN
19 DELTACOM REQUESTS STAND-ALONE UNEs TO REPLACE SPECIAL
20 ACCESS SERVICES.

21
22 A. DeltaCom can avoid paying the "full installation charges of the FCC circuit"
23 by initially choosing to order stand-alone UNEs instead of special access
24 circuits. The applicable and appropriate charges for the installation and
25 provisioning of stand-alone UNEs are the non-recurring rates approved by this

1 Authority in its UNE Cost Orders. Should DeltaCom choose to order special
2 access circuits, instead of stand-alone UNEs, it should be charged for those
3 circuits in accordance with the applicable BellSouth special access services
4 tariff.

5

6 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

7

8 A. Yes.

9

10

11

12

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14

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